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KARNATAKA LEGISLATIVE ASSEMBLY

NOTIFICATION

No. 4105/LA Bangalore, dated 24th July 1975

Under Rule 64 of the Rules of Procedure and Conduct of Business in the Karnataka Legislative Assembly, the Speaker has been pleased to order the publication in the *Karnataka Gazette* of **The Karnataka (Determination of the Retirement Age of Certain Teachers) Bill, 1975** together with the Statement of Objects and Reasons relating thereto and the Bill and the Statement of Objects and Reasons are accordingly published for general information.

THE KARNATAKA (DETERMINATION OF THE RETIREMENT AGE OF CERTAIN TEACHERS) BILL, 1975.

(L.A. BILL No. 24)

A Bill to determine the retirement age of certain teachers in the State.

Whereas in pursuance of the policy decision taken to reduce the retirement age of certain categories of Government servants from fifty-eight years to fifty-five years, Notification No. GSR 21 (FD 150 SRS 73), dated 30th January, 1974 was issued concerning the teachers of the erstwhile Mysore State, who immediately before 1st November, 1956 were governed by Note 4 below clause (c) of Article 294 of the Mysore Services Regulations ;

Whereas retirements were effected in accordance with the said Notification;

Whereas in Writ Petition No. 525 of 1974 and connected writ petitions the High Court of Karnataka has held that in view of rule 95 of the Karnataka Civil Services Rules the said Notification did not have the intended effect of reducing the retirement age of such teachers;

Whereas it is necessary to make suitable provisions for the purpose;

Whereas the previous approval of the Central Government under the proviso to sub-section (7) of section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) has been obtained as in letter No. 5/23/73 SR(S) dated the 21st January 1974 of the Government of India, Department of Personnel and Administrative Reforms (Cabinet Secretariat) ;

Be in enacted by the Karnataka State Legislature in the Twenty-sixth year of the Republic of India as follows :—

1. Short title and commencement.—(1) This Act may be called the Karnataka (Determination of the Retirement age of certain Teachers) Act, 1975.

(2) It shall be deemed to have come into force on the 30th day of January, 1974.

2. Retirement age.—(1) Notwithstanding anything in any judgment, decree or order of any Court, Tribunal or other authority, on and from the date of commencement of this Act (hereinafter referred to as the appointed day),—

(i) the date of compulsory retirement of every teacher of the erstwhile Mysore State allotted to the State of Karnataka who immediately before the 1st November 1956 was governed by Note 4 below clause (c) of Article 294 of the Mysore Services Regulations and who is in service on the appointed day, shall be the day on which he attains the age of fifty-five years ;

(ii) rule 95 of the Karnataka Civil Services Rules shall apply to every such teacher with the omission in clause (a) of the said rule, the words and figures "subject to the provisions relating to protection of conditions of service prescribed by the Government of India in respect of persons allotted or deemed to be allotted to serve in connection with the affairs of the State of Karnataka under section 115 of the States Re-organisation Act, 1956" ;

(iii) every such teacher who,—

(a) has continued service after the appointed day, even after he has attained the age of fifty-five years shall retire from service on the date on which he attains the age of fifty-eight years or on 1st March 1974, whichever is earlier ;

(b) attains the age of fifty-five years after the appointed day but on or before 1st March, 1974 shall retire on 1st March, 1974 ;

(c) attains the age of fifty-five years after 1st March, 1974, shall retire at the end of the month in which he attains the age of fifty-five years.

(2) Notwithstanding anything to the contrary contained in the Karnataka Civil Services Rules, the entire earned leave not exceeding one hundred and twenty days to the credit of such teacher on the date of his retirement who retires within a period of six months from the appointed day shall be deemed to have been refused to him in public interest under Rule 110 of the Karnataka Civil Services Rules and he shall be permitted to avail it with effect from the date of his retirement:

Provided that in the case of such teacher who is governed by the rules applicable to him in his parent State the period of such leave, whether earned leave or privilege leave or furlough leave on average pay, shall be as permissible under such rules:

Provided further that nothing in this sub-section shall apply to a teacher who on the appointed day is on leave preparatory to retirement.

3. **Savings.**—Notwithstanding anything contained in Section 2, any teacher referred to in the said section, who by virtue of any order of any court or otherwise has continued in service even after he has attained the age of fifty-five years and was working as such teacher on the date of promulgation of the Karnataka (Determination of the Retirement Age of Certain Teachers) Ordinance, 1975 (Karnataka Ordinance No. 2 of 1975) shall be deemed to have retired from service with effect from the afternoon of 31st May 1975 and shall be deemed to have been granted extension of service from the appointed day till 31st May, 1975.

4. **Validation.**—Any action taken in respect of any retirement of a teacher of the category referred to in Section 2 after the appointed day but before the date of

promulgation of the Karnataka (Determination of the Retirement Age of Certain Teachers) Ordinance, 1975 (Karnataka Ordinance No. 2 of 1975) shall be deemed to be valid and shall be deemed to have been taken or effected in accordance with the provisions of this Act as if the said provisions were in force at all relevant times.

5. **Repeal of Karnataka Ordinance No. 2 of 1975.**— The Karnataka (Determination of the Retirement Age of Certain Teachers) Ordinance 1975 (Karnataka Ordinance No. 2 of 1975) is hereby repealed :

Provided that anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

Pursuant to a decision of Government that all Government servants, irrespective of the departments in which they might be serving, should be retired at the age of 55, Karnataka Civil Services Rules were amended in Notification No. GSR 289, dated 16th November 1973. This notification did not, however, affect the age of retirement of **inter-alia** teachers from the old Mysore area, since they enjoyed protection under the States' Re-organisation Act.

2. In order to have a uniform retirement age, which would cover teachers of old Mysore area also, approval of Government of India under the States' Re-organisation Act was obtained to reduce the age of retirement from 58 to 55 years. Thereafter, Notification No. GSR 21, dated 30th January 1974 was issued for the deletion of Note 4 below Clause (c) of Article 294 of Mysore Services Regulations.

3. Writ Petitions were filed before the High Court of Karnataka questioing the validity of the above Notification. In its judgment delivered on 18th October 1974, the High Court held that the amendments to the Mysore Services Regulations effected in the Notification of 30th January 1974 were ineffective and void. This was because, in their view, Note 4 below Clause (c) of Article 294 of the Mysore Services Regulations already stood repealed by virtue of Rule 95(d) of the Karnataka Civil Services Rules.

4. Under the Notification of 30th January 1974, a large number of teachers had already retired from service. Some teachers continued in service by virtue of Stay orders issued by the High Court of Karnataka. Therefore, it was felt that the retrospective retirement from 1st March 1974 contemplated in the Notification of 30th January 1974 should be validated through a Legislative measure. Government of India was again moved for approval under

the States' Re-organisation Act for issue of an Ordinance. Government of India intimated that there was no need for their fresh approval.

5. It would obviously be invidious to allow a higher age of retirement only to old Mysore teachers. As both the Houses of Legislature were not in session, an ordinance was therefore promulgated on 22nd May 1975. The Ordinance provided for the retirement of teachers of old Mysore area on attaining the age of 55 years. Such of those who had already attained the aeg of 55 years by 1st March 1974 would retire on 1st March 1974 and those who had continued in service beyond the age of 55 years at the time of the issue of the Ordinance were deemed to have been given extension of serivces till 31st May 1975, on which date they would retire from service.

6. The Bill seeks to replace the Ordinance.

FINANCIAL MEMORANDUM

Clause 2(3) of the Bill provides for refusal of Earned Leave upto a maximum of 120 days, standing at the credit of Teachers who retired within a period of six months from 1st March 1974. Clause 3 of the Bill provides for treating the service after a teacher attained the age of 55 years and upto 31st May 1975, as extension of service. Consequent on slch extension, the Teachers may be entitled to slightly higher pension and gratuity benefits. The extent of the additional expenditure, whether on account of refusal of leave or on account of increase in retirement benefits, is difficult to estimate, as this would depend on the last pay drawn, leave at credit etc., of each individual teacher. It is estimated, however, that the additional expenditure will not exceed Rs. 1.5 lakhs non-recurring and Rs. 50,000 recurring.

Statement under Rule 70(1) of the Rules of Procedure and Conduct of Business in the Karnataka Legislative Assembly

Under Government Notification No. GSR 21 dated 30th January 1974, a number of teachers had already retired from service. Some teachers however continued in service by virtue of Stay Orders issued by the High Court. In view of the decision of the High Court holding the Notification of 30th January 1974 as in valid, Government took a deicision to validate the earlier retirements through a Legislative masure. Both the Houses of the Lgislature were not in Session and the matter could not wait till the next Session. Hence an Ordinance was issued.

M. Y. GHORPADE

ANNEXURE

Extracts from the Mysore Service Regulations

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294. (*a*)

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(*o*) Heads of Departments are authorised to retire all non-gazetted Government servants under them when they attain the age of fifty-five, and to grant extension of service for a period not exceeding six months only in very exceptional cases if the Government servant is considered to be efficient and such extension is considered absolutely necessary in the interests of public service. In no case, extension be given beyond six months without orders of Government.

* * *

Note 4. The age of retirement of trained teachers in the Education Department may generally be fifty eight years, and in case of teachers who are not trained but who are otherwise efficient, the age of retirement may also be fifty eight years.

The above concession may also be extended to categories of appointments such as technical teachers handling agricultural and practical instruction classes. pandits, moulvis, music teachers, sewing mistresses, drill instructors etc., for whom there is no teacher training course, and to the Range Inspectors of Schools and Officio Assistants and Wardens of Government Hostels who are also teachers in every sense and have been only posted as inspectors or office Assistants due to their experience and ability, and to music teachers, drill instructors and teachers of other special subjects, Assistant Professors, Professors, etc., in the Samskrita Colleges at Bangalore and Mysore and Head Masters of High Schools.

The Director of Public Instructions in Mysore, is empowered to order the retirement of teachers, trained and untrained in the non-gazetted cadre who have not got a good record of service and who are not upto the mark, at the age of fifty five years, and in the case of Gazetted Government servants, with the concurrence of Government in each case".

The above provisions shall be deemed to have come into force with effect from the 20th August 1954.

Extract from the Mysore Civil Services Rules

95 (*a*) Subject to the provisions relating to protection of conditions of service prescribed by the Government of India in respect of persons allotted or deemed to be allotted to serve in connection with the affairs of the State of Mysore under section 115 of the States Reorganisation Act, 1956, the date of compulsory retirement of a Governmtnt servant, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement, with the sanction of Government and if the Government servant concerned is physically fit, on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

Provided that in respect of Government servants attaining the age of superannuation after the first day of January, 1974, where the date of such superannuation falls on a day other than the first day of a month, he shall retire on the afternoon of the last day of that month"

Note 1. When a Government servant is required to retire or cease to be on leave, on attaining a specified age, the day on which he attains that age is reckoned as a non-working day, and the Government servant must retire, or cease to be on leave, (as the case may be) with effect from and including that day.

Note 1-A. In case where the date of compulsory retirement of a Government servant and the day/days preceding thereto are general holidays he may be pesnitted to handover charge on the afternoon of the last working day before the date of such retirement and may be allowed duty pay for the holidays.

Note 2. The grant under Rule 110, of leave extending beyond the date on which a Government servant must compulsorily retire, or beyond the date up to which the Government servant has been permitted to remain in service, shall be treated as sanctioning an extension of service up to the date on which the leave expires.

Note 3. The proviso shall not apply to cases of compulsory retirement as a measure of penalty after disciplinary proceedings, retirement on invalid pension under Rule 23 and retirement under Rules 284 and 285, the proviso shall also apply to Government servants whose services are extended in the interests of public service or who are granted refused leave under Rule 110 or any corresponding rule.

110. No leave shall be granted beyond the date on which an ing rule.

Provided that the authority empowered to grant leave, may allow any officer, who has been denied in whole or in part on account of the exigencies of the public service, the earned leave which was due to him, pending retirement, the whole or any portion of the earned leave so denied, even though it extends to a date beyond the date on which such officer must compulsorily retire.

Provided further that an officer, whose service has been extended in the interests of the public service beyond the date of his compulsory retirement, may similarly be granted either within the period of extension or after its expiry, any earned leave which could have been granted to him under thet preceding proviso had he retired on that date less the leave, if any, taken during the period of extension and. in addition, such earned leave due in respect of the extension as had been formally applied for as preparatory to final cessation of his

duties, in sufficient time during the extension and refused to him on account of the exigencies of the public service. In determining the amount of earned leave due in respect of the extension with reference to Rule 112 of earned leave. if any, admissible on the date of the compulsory retirement shall be taken into account.

Provided further that every Government Servant :—

(*a*) Who, after having been under suspension, is reinstated within 120 days or 6 months, admissible under the Rules applicable to him preceding the date of his compulsory retirement, and was prevented by reason of having been under suspension from applying for leave preparatory to retirement, shall be allowed to avail of such leave as he was prevented from applying for, subject to a maximum of 120 days or 6 months, as the case may be, reduced by the period between the date of reinstatement and the date of compulsory retirement;

(*b*) who retired from service on attaining the age of compulsory retirement while under suspension and was prevented from applying for leave preparatory to retirement on account of having been under suspension, shall be allowed to avail of the leave to his credit subject to a maximum of 120 days or 6 months, as the case may be, after the termination of proceedings, as if it had been refused as aforesaid if, in the opinion of the authority competent to order reinstatement he has been fully exonerated and the suspension was wholly unjustified.

Explanation.—For the purposes of this Rule an officer may be deemed to have been denied leave only, if in sufficient time before the date on which he must compulsorily retire or the date on which his duties finally ceases, he has either formally applied for leave as leave preparatory to retirement and has been refused on the ground of exigencies of public service or has ascertained in writing from the sanctioning authority that such leave if applied for would not be granted on the aforesaid ground.

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